Bastard Nation
The Adoptee Rights Organization

COMMENTS

Hague Convention on Intercountry Adoption:
Intercountry Adoption Act of 2000

Accreditation of Agencies
Approval of Persons
Preservation of Convention Records

State/AR-01/96 or State/AR-01/98

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Bastard Nation: The Adoptee Rights Organization (BN) appreciates this opportunity to submit comments regarding the draft regulations on the implementation of the Intercountry Adoption Act of 2000 (IAA).

Bastard Nation is the largest adoptee civil rights organization in North America. We are an all-volunteer organization with no financial interest in adoption. Bastard Nation is dedicated to the recognition of the full human and civil rights of adult adopted persons. We advocate the opening to adopted persons, upon request at age of majority, of those government documents which pertain to their historical, genetic, and legal identity. We assert that it is the right of people everywhere to have their official birth records unaltered and free from falsification, and that the adoptive status of any person should not prohibit him or her from choosing to exercise that right. We do not support mandated mutual consent registries or intermediary systems in place of unconditional open records, nor any other system that is less than access on demand to the adult adoptee without condition and without qualification. BN has been instrumental in the restoration of the right to records access and identity for those adopted in Oregon and Alabama and continue to work in states and provinces across the US and Canada to restore those rights to all adopted persons. We also support and work with adoptee rights organizations in other countries to assist them in establishing and maintaining the right to records, identity, and related issues.

Our comments on the draft IAA cover four categories with which we have grave concerns: (1) Central Authority/Accreditation; (2) Records Retention; (3) Records Access; and (4) Outsourcing of American Children into the international adoption market. Our recommendations follow each section.

1. CENTRAL AUTHORITY/ACCREDITATION

While some countries, such as the United Kingdom rightly focus their Hague implementation on the development of detailed guidelines and best practice standards in adoption, the main thrust of the draft IAA, is international adoption agency licensing—what the IAA nicely refers to as "accreditation." The agency (or agencies) aka the "Central Authority" that "accredits" US intercountry adoption agencies, will not only wield tremendous power through monitoring agency activities, addressing grievances, and controlling (or not) compliance with law and policy, but collect fat accreditation fees in the process. The UK, Germany and others have already appointed government agencies to act as the Central Authority in their own countries. Unfortunately, but permitted by Hague guidelines, the US Department of State, the rightful Central Authority for the United States has rejected that role. Washing its hands of any meaningful control of US-international adoption, the State Department intends to outsource Central Authority jobs to not-for profit and public agencies that will collegially guide agencies through the "accreditation" process. Accredited agencies are, in turn, are expected to "self-regulate themselves," with the privatized Central Authority stepping as lightly as possible, and the State Department even lighter. Bastard Nation finds this arrangement dubious. We believe it will do little to protect the "adoption triad" from agency abuse, mismanagement, and ethical and professional abuse. Instead these rules

may actually encourage cronyism and corruption due to the fee-based "accreditation" process.

Bastard Nation believes the IAA in its present form is rife with problems, many beyond our mission scope, but which very much impact our mission: refusal to acknowledge US-international adoption as a federal product; lack of meaningful government oversight, industrial incest and conflict of interest, and appointment of agencies and organizations to Central Authority status inimical with best practices of adoption and openness—including adoptee and identity rights. We are particularly concerned about the rumored Central Authority appointment interest of conservative organizations with sealed records, and anti-adoptee rights agendas. Moreover, there is little genuine concern voiced in the IAA of much vaunted best practice and "best interest of the child" standards. Overall, we are highly critical of the draft IAA emphasis on collegial "accreditation," and laizee faire regulation. Its effort to de-federalize, de-centralize, and secularize the very federal process of international adoption, by farming out Central Authority responsibilities to localized and often limited public agencies and non-profit private entities with sometimes political agendas, and by permitting the adoption industry to set standards, monitor compliance, and control their own houses all put the fox smack dab in the hen house.

With these overall criticism spoken, Bastard Nation chooses to focus our specific comments to two accreditation/Central Authority issues directly tied to our organizational interests of accountability, transparency and openness: the grievance procedure and legally protected accreditation documents sealed and blocked from public access.

Grievance Procedure: Bastard Nation is particularly concerned about the proposed grievance procedure that pays lip service to adoptee, birth parent and adoptive parent "protection," with a tedious, drawn-out process via a Complaint Registry in which grievances—including those regarding records retention and access--can allegedly be redressed. Proposed grievance decisions are generally in-house administrative dictates not open to meaningful appeal. According to the draft IAA, the State Department believes that this long-winded process, which depends on agency personal responsibility and self-regulation to settle disputes, "will minimize, if not eliminate the need for an accrediting entity or the Department [State] to take adverse action" and will reduce litigation.

As discussed in another section of these comments, the so-called adoption "triad" traditionally has often been ignored, disregarded and maltreated by adoption providers and professionals who frequently enjoy little accountability, leaving the triad few opportunities for meaningful grievance. Under this draft IAA self-regulation grievance scheme, with no substantial appeal, and virtually no State Department authority, we find the proposed grievance procedures ineffectual, inadequate, and self-interested. We recognize that some adoption providers are ethical and accountable and respond to concerns and grievances in a responsible manner. Nonetheless, the adoption industry on the whole, has no viable history of handling grievances in a timely and responsible manner, leaving each provider to its own rules of engagement.

Adoption providers in the past have been, and continue to be, particularly unresponsive to requests from adopted adults seeking information about their origins, identity, and adoption history. Adoption is a sensitive, personal, but nonetheless money-driven consumer activity. Providers need to be responsive to the needs of everyone involved in both pre- and post placement services. We therefore believe that the grievance procedure should not be placed in the hands of those who not only intend to protect themselves but also are protected by a privatized Central Authority system with a vested financial interest in maintaining the status quo. We believe, therefore, that the grievance procedure, by virtue of the federalized nature of international adoption should be removed from the hands of agencies and the privatized Central Authority and moved to the Federal Trade Commission, which would develop an independent and accountable grievance procedure

Collection of Accreditation Documents: According to the draft IAA, agency documents submitted for the accreditation process are held secret and apparently not accessible through The Freedom of Information Act (FOIA). Disclosure of all documents and information about the agency or person applying for accreditation, "including but not limited to, documents and proprietary information about the agency's or person's finances, management, and professional practices, performance and its accreditation or approval oversight, enforcement, renewal, data collection and or person **cannot be released to the public**, and can only be used to evaluate application and performance or to investigate official complaints.

We do not understand how this anonymity serves ethical adoption. We question how adoption consumers can judge adoption services and outcomes without accessible performance records and other information normally associated with sound social welfare and business practice. These protected accreditation documents, held secret by federal law, are analogous to traditional secret adoption with its legally protected sealed records, and lock adoption practices from public scrutiny.

Adoption agencies and the Central Authority should be open about their operations and procedures and upon the request of clients, service recipients, and the public at large release data on performance, management and financial practices. The IAA should permit the release of accreditation documents. Furthermore, grievance regulations developed under the Federal Trade Commission should include procedures for the receipt of accreditation documents when agencies or the Central Authority refuse to comply with requests.

RECOMMENDATIONS

International adoption, with the involvement of numerous federal agencies and foreign governments, is by definition a federal procedure that demands federal responsibility and oversight, not the proposed privatized and/or localized control found in the draft IAA with its often special political and financial interests. Bastard Nation believes, therefore, that the IAA as proposed does little to further best practice or "best interest of the child" standards. Instead it serves the needs of the adoption industry, particularly private agencies, by promoting a system of self-regulation guided by a privatized Central

Authority that makes its money off of these same agencies. The privatization of the Central Authority as proposed by the IAA is inimical to sound international adoption practice.

We also believe that accreditation procedures should be open to public scrutiny. Grievance procedures against agencies or the Central Authority need to be moved outside of the narrow realm of "self-regulation" and into an experienced consumer protection process.

Bastard Nation, in regard to accreditation/Central Authority procedures recommends the following:

- Federalization of US-international adoption procedures. The proposed privatization of the Central Authority should be withdrawn and replaced with Department of State appointment as that body.

- Best standards and best interest of the child standards should replace the best interest and self-regulation of adoption agency standards.

- Grievance procedures should be removed from the Central Authority and public and private adoption providers and placed with the Federal Trade Commission.

- Accreditation applications and accompanying documents submitted to the Central Authority during the accreditation process, currently proposed to be under lock, be made available for public scrutiny upon request

- Denial of public access to adoption agency accreditation application documents

- Concerns over "substantial" v "absolute compliance" to IAA regulations and idea that absolute compliance would adversely affect agencies.

- Convoluted grievance procedure in which secularized Central Authority has virtual control over decisions with no meaningful appeal process. Grievance procedure, as such, is geared toward adoptive parent complaints with little likelihood that birth parents in remote country would even know how to file complaint

2. RECORDS RETENTION

Proposed IAA regulations establish two separate types of records, record retention schedules and record storage locations--"Adoption Records" maintained by individual private adoption agencies or public welfare providers within individual states, and "Convention Records" maintained by an as of yet unnamed bureau of the Department of Homeland Security.

The proposed IAA requires that a child's "social history, medical information, and effects" be preserved, but it does **not** set specific retention guidelines nor does it define which records should be retained, where those records will be located state and federally, and what should, whenever possible, be in those records and effects.

We find both of these retention schemes completely unacceptable.

Adoption Records: The proposed regulations require private and public adoption providers to preserve and maintain international adoption records and personal effects of international adoptees under the retention regulations of their own states. The appropriate privatized Central Authority will oversee compliance with no meaningful recourse of appeal.

The adoption trade lobby has long held that adoption is a state, not a federally controlled practice. While this linguistic trick may further the industry's agenda of minimum regulation and accountability, and make a comfortable case for continued de-centralization of adoption practice, including records retention and access, the doctrine of state control, is simply not true. The Interstate Adoption Compact, the instrument that oversees Interstate Adoption, the most common form of domestic private adoption in the US today, has already set the precedent for federalization. International or cross-country adoption is by definition, a federal and international process, with the involvement of numerous federal agencies (Department of State, INS, FBI, Consular Services, and now the Department of Homeland Security) and foreign government authorities and should be treated as such, not as an adjunct of state adoption practice.

The various 50 states and territories have a hodgepodge of laws regarding retention of adoption records that can vary not only from state to state but also county to county. State and local entities retain "official" government records such as original birth certificates and adoption decrees. In most states private adoption agencies, private placement adoption lawyers, and public child welfare agencies that handle adoptions, in theory, retain other records such as social and medical histories, post-adoption correspondence, and release of information forms. In at least one state (Tennessee) all records are held at the state level. While these holdings might be subject to state retention and access rules, it is not unusual for agencies to not comply with these regulations.

Adoption agencies have a long history of going out of business, throwing out records, losing records, and ignoring requests for information. The most common excuse is fire, flood or other natural disaster. In 1970, a person or persons unknown, without authorization and against Ohio law, destroyed over 70 years of adoption records in the holdings of the Toledo Family Counseling Service. When the founder and director of the Ohio Children's Home Society died, her family, at her request, burned thousands of records, again outside of the law. Agencies, both private and public, claim to be unaware of state retention and access laws and routinely tell adopted adults and their birth and adoptive parents that they either do not have records, or that they are not allowed to release information, not even non-identifying information, when indeed they are permitted to do so by law. Records that do exist are often kept under no physical

preservation standards being stored in closets, backrooms, basements, and off-site warehouses. Some agencies require the payment of fees--sometimes hundreds of dollars--before they will even look for a file. Some agencies even require the adopted person seeking his or her records to undergo "psychological counseling" for a fee with the agency's own so-called post- adoption counselor to determine if the adoptee is "ready" to own her or his personal information. Release of information, despite best practice standards or law is based frequently on social worker and agency convenience and whim.

The entire state adoption records retention and access system is set up to discourage both retention and access. Complaints about poor retention standards, non-compliance with state law, lost and destroyed records, unethical and illegal practices, and non-response is frequently ignored or impossible to redress. Depending on the state, agencies that go out of business may or may not be required to transfer their records to another private or public agency, and information on the locations of these records (if they exist) is hard to uncover with both state and private adoption providers passing the buck. Court ordered investigations of bad retention practices are difficult at best since the agency or specific agency personnel responsible for bad practice are no longer available. The general attitude is one word: "TOUGH!"

Of further concern are the unfunded federal mandates involved with state retention of international adoption records. In a system that can't even decently define and maintain public and privately held records due to disinterest, high cost, or plain old unaccountability, how can they be expected to maintain international adoption records? It is difficult to believe that international adoption records held by public and private agencies on the state level would be treated under proposed IAA regulations, any better than they are now--especially if grievances are to be contained through industry "self-regulation."

Finally, it is especially alarming that **international** adoption records retention and maintenance would be out-sourced to public and private adoption providers; thus privatizing federal records and making them potentially inaccessible to internationally adopted persons and their families under current FOIA guidelines. We further believe that the privatization of records retention will set a dangerous precedent for the privatization of any and all federal records, and abrogate the public's right to know.

Convention Records: We are deeply concerned that no definition of Convention Records and effects has been developed and that no Department of Homeland Security bureau has been named or established to retain these records. We are also concerned that Convention Records have a different retention schedule from state-stored international adoption records: 75 years —and that the accompanying language suggests that cost should factor into the final draft of the retention timeframe.

Finally, we are extremely uncomfortable with the Department of Homeland Security retaining and maintaining the records of international adoptees. Children adopted internationally are not terrorists, criminals, or "enemy combatants," and their identities and records should not be tainted by the implication that they and their biological and

adoptive parents are dangerous or worthy of DHS scrutiny. We therefore, believe that Convention Records should be held by another, less politically charged and more user-friendly federal department such as the National Archives.

RECOMMENDATIONS:

The records of adopted persons are precious artifacts of identity, heritage, family, and culture. Too often these records have been sealed, lost, or destroyed under a system that has been manipulated traditionally by interests of profit, power, and social engineering with little accountability and with total disregard for adopted persons rights, interests, and humanity. In a country where government collection and retention of the most trivial paperwork is routine and open to public scrutiny, the retention of records documenting the lives and histories of adopted persons should not subject to hand wringing over cost.

Bastard Nation makes the following recommendations regarding records retention:

- Establish a strict table of definitions of the records and effects to be collected and retained.
- Establish strict enforceable regulations on the physical maintenance, storage, and retention of these records and effects based on established and professional archival standards
- All records pertaining to international adoption should be considered federal records, retained by the federal government and made accessible through the Federal Freedom of Information Act (FOIA) or a federally generated and enforceable disclosure instrument designed specifically for US-international adoptions.
- Convention Records should **not** be retained by the Department of Homeland Security, but by a user-friendly federal agency with a proven record of archival and retention expertise, consumer protection and service. We recommend the National Archives as that depository.
- All records are to be held in perpetuity, not expunged after 75 years.

3. RECORDS ACCESS

The IAA defines "Adoption Records" as those held by agencies or persons or state public bodies. Adoption records held by federal government agencies are called "Convention Records." Unfortunately, the IAA contains no definition of what specifically constitutes Adoption Records or Convention Records, only a general definition of the records themselves:

Any record, information, or item related to a specific Convention adoption of a child received or maintained by an agency, person or public body, including but not limited to

photographs, videos, correspondence, personal effects, medical and social information and any other information about the child. And adoption records do not include a record generated by an agency person, or a public body to comply with the requirement to file information with the Case Registry (tracking system jointly established by the State Department and Homeland Security) on adoption not subject to the Convention pursuant to section 303(d) of the IAA (Pub L. 106-79, 303(d) 42,USC 14932 (d). (p. 54094).

Proposed IAA regulations reject federalization implications. Instead, the IAA permits the states to set and maintain their own standards regarding many adoption procedures including records access; thus, holding the individual states as the superior authority. As discussed in Records Retention, this argument belies the fact that the Federal Interstate Adoption Compact today governs the majority of domestic infant adoptions and that the international adoption process is a federal not a state process.

In regard to adoptee access to their own adoption records, the IAA takes the "states rights" or what the State Department prefers to call a "neutral position" which permits the various states to dictate, under their own laws, what if any records are open to the adopted person. This "neutral position" appears to overrule records access laws in many sending countries and violates the spirit of The Hague treaty, in which identity rights are recognized. The current IAA designation of often ethically or legally derelict public and private adoption entities which have shown little regard for best practice, accountability, and a willingness to work with adopted persons and their families to hold and distribute adoption records willy-nilly is unacceptable. Likewise, there is no reason to trust an unnamed Department of Homeland Security, with its aura of espionage, intrigue, and suspicion, with either the retention or distribution of adoption records. International adoptees and their families are not criminals and their records should not be tainted with criminal repute.

All Records: At no point does the IAA define exactly which records or information are specifically collected for either Adoption or Convention records outside of vague terms such as "any record received." Neither does the IAA specify which information can be given to the adopted person or his family, when it can be given, the manner in which it must be requested, nor does it state specifically which Adoption Records and which Convention Records can be released to the adopted person or her family by the various states or the federal government separately or together. The provisions, in effect, not only permit state and federal entities to release what they please, when they please, but to set no information expectations and guidelines for international adoptees and their adoptive families. This is totally unacceptable

State Records: By taking a "neutral" course on records access the draft IAA gives a nod to "business as usual," which in many cases means no business at all since state and private agencies as well as local courts are notoriously unresponsive to requests from adopted persons, birth parents and adoptive parents seeking information (even non-ID information mandated by law) they are entitled to receive (see Records Retention). Except in Kansas, Alaska, Oregon, and Alabama where state-held adoption records are available without restriction to adopted adults, it is not unusual for an adopted adult to

wait years to receive information to which she is entitled, if she receives it at all. Social workers, magistrates, judges, and other "officials" arbitrarily decide not only if and when they will disclose information, but also what kind of information, both state and privately held, they will disclose. Moreover, the form in which the information is received is arbitrary. Some agencies send copies of redacted original documents, others send re-written, heavily edited documents, and others send summaries. Some even demand that adoptees undergo "pre-disclosure" psychological counseling to receive information about themselves. By all accounts, adopted persons are put into a position of begging, often paying exorbitant fees for scraps of information about their social and medical histories, origins and identity—personal information that the non-adopted take for granted. Decisions on information disclosure can differ from agency to agency, social worker to social worker within the same agency, and judge to judge within the same jurisdiction, despite state laws, regulations and guidelines and recommended policy standards set by professional organizations such as the Child Welfare League of America. Those seeking information can spend years shopping their requests from social worker to social worker or court to court in the hope of unlocking their own files. There is no doubt that international adoption records access could be even more complicated and exasperating with the plethora of private and public agencies and bureaucrats involved.

In theory, US-international adoptees in open records states under the proposed "neutral" states rights policy should have access to identifying records; those in closed record states would be subject to various sealed records statutes. International adoption regulations, including records access rules, however, can fall under separate rules, which would need to be amended on an individual state level unless the federal government through the IAA or another instrument mandates federal intervention. In 1999, in Oregon, for instance, when the right to records access was restored to adopted persons, special legislation had to be added to the new open records statute to insure that those adopted in Oregon via international adoption, would be allowed the same records access as those adopted domestically in that state.

Importantly, records access is the norm in most Hague signatory countries. Foreign governments support international placement, but are also quite clear that they desire those adopted and taken from their countries of birth to enjoy the same right of identity and records access as they would if they had been adopted in their home countries. The IAA, as it is currently proposed, appears to deny both, letting the various states set laws that seal records and seemingly overrule records access regulations of sending countries.

Bastard Nation, then, is troubled that those adopted internationally may be barred from freely accessing their adoption records including identifying information due to an assumption that state sealed records laws trumps the open records and identity rights laws of countries of origin. The IAA must address two questions:

- Would information and documents—Adoption Records and/or Convention Records--gathered in sending countries, but held by the various receiving states in either private or public repositories or by the federal government be accessible to the adopted person through state and/or federal law?

- Would those adopted internationally be permitted to access their records in or from their country of origin or would states attempt to bar other countries from releasing information; thus letting states dictate internal adoption policy of foreign countries?

Finally, we are deeply troubled by the proposition that international adoption records, including federally generated documents and information would be held by states and public or private adoption providers with no FOIA applicability and under the authority of a non-government Central Authority (or Authorities). We believe that by embracing the alleged right of the various states to determine international adoption records access, the proposed IAA rules encourage continued mediocre state and private post-adoption services, secrecy in adoption, and the outdated sealed records system. The proposed access rules are wholly outside of the spirit of the Hague and the open records access laws of most sending countries.

Convention Records: We are concerned that Case Registry records are not considered part of either the Adoption Records or Convention Records and will be excised from the file and from scrutiny. The exclusion of these records begs to question accountability standards and practices.

We are also greatly concerned that the draft IAA is unclear on the manner in which Convention Records can be accessed—through the Federal Freedom of Information Act (FOIA) or some other instrument. The IAA also does not address the speed and "friendliness" by which requests will be answered. Currently FOIA requests, depending on the type of request and agency, can take anywhere from a few weeks to years. We are very concerned that Convention Records, now scheduled to be held by an unnamed bureau in the Department of Homeland Security, will be tied up, with virtually no viable grievance recourse, in "security-based" red tape, instead of a more consumer-oriented government agency with a proven record of service and sensitivity.

RECOMMENDATIONS:

Bastard Nation dismisses the states rights approach to records access that de-federalizes important parts of international adoption procedures. We believe that this "neutral" policy denies the right of adopted persons to their identities, histories, and records. Moreover, it fails to comply with the spirit of The Hague Treaty and with domestic policy and law of many sending countries. The imposition of an unstandardized mish-mash of state laws and inept public and private procedures and practices, often hostile to adoptee requests for records, could in fact, harm intercountry adoption and discourage sending countries from releasing children to the US.

We believe that a best practice and openness policy on the federal level regarding international adoption records access—a practice that is recognized in most sending countries and endorsed by the Child Welfare League of American, The National Association of Social Workers, and other major child welfare agencies and dozens of adoption reform organizations including Bastard Nation, the American Adoption

Congress, and Ethica —would encourage states to adopt similar best practice and openness procedures.

Bastard Nation recommends the following regarding international adoption records access:

- **ALL information in international adoption records file, including all identifying information, be made available upon request to the adopted adult or to his or her adoptive parent(s), if the adopted person is still a minor.** Nothing in this recommendation should be construed to suggest that open records states should seal the records of international adoptees. On the contrary, those records should remain available them, and the openness practiced in international adoption should encourage states to make records available to those adopted domestically.

In the event that the above recommendation is not applied, we offer the following modified recommendations:

- Records access will be determined by the rules and regulations of the various sending countries, not the various states, with the caveat that that those adopted in open records states in the US be allowed continued access to their records as determined under those open records laws.

- Establish time frames, efficient procedures, and accountability standards, including workable grievance procedures, for the release of information and records to adopted persons on the federal and state levels.

- Establish clear explanations and rules regarding access to records generated in sending countries that are held in the US on the federal and state level as well as in sending countries. Prohibit state-level adoption providers from attempting to dictate records access policy in sending countries.

- Include Case Registry records as part of the official adoption record to be released to appropriate parties upon request.

- Prohibit privatization of adoption records access.

- Remove the Department of Homeland Security as the records depository and as a conduit for records access, replacing it with the National Archives.

4. OUTSOURCING OF AMERICAN CHILDREN

According to the Hague children are not to be sent abroad unless suitable families cannot be found for them in their native country and a "timely" search has been made for adoptive placement domestically—unless such a search is considered to be "not in the best interest of the child." With the high number of "waiting parents" in the US it is

inconceivable, absent specific placement wishes of a birth parent(s) that any US infant *should* be placed in an overseas stranger adoption. We also know, though, that US adoption agencies and facilitators currently send children abroad for placement. While it appears that draft IAA emigration standards pertain mainly to children who are adopted by foreign stepparents or placed with foreign kin, it is apparent by the proposed regulations that a trade in American children is expected to continue on some level. Surprisingly, neither state nor federal government controls seem to be in place to safeguard US children from exportation to foreign countries for purposes of adoption placement. According to the IAA, summary, the US currently keeps neither statistics nor files on the identities and adoptions of American children adopted internationally, and there is no specific language in the proposed IAA regulations to rectify this lack of record keeping.

The possible and probable outsourcing of US newborns or infants through international adoption is a reality, and Bastard Nation believes that this practice can have dangerous consequences. We believe that those Americans adopted internationally will face problems similar to those placed in the US from other countries, and that none of these problems are addressed in current IAA language.

- How does adoptee access to records in sending states affect access to records held in receiving countries and vice versa? Will state law dictate records access policy in receiving countries?

- Will state or federal governments or private adoption entities keep records on all US children placed internationally?

- Will federally held records-- if they exist-- of American-born internationally adopted children be outsourced into private hands, and if so, will those adoptees be able to access them and if so, how? What about state-held records?

- What citizenship status will the adoptee hold? Would she remain an American citizen, hold dual citizenship (or be told how to register for dual citizenship), or lose American citizenship?

RECOMMENDATIONS:

Questions such as what controls the US government will maintain on personal and national identity, records access, and citizenship rights and responsibilities all need answers, which the draft IAA does not offer. We believe that the issue of American-born internationally adopted children needs to be re-visited and strict controls put in place to assure their rights of identity, records, and US citizenship.

Bastard Nation recommends the following regarding US adoptees placed internationally:

- Establish a definition of "adoptability" that explains why a search for a suitable placement within the US is not in "the best interests of the child," especially, but not limited to stranger infant placement.

- All records pertaining to the international adoption of US-born children should be considered federal records, retained by the federal government and made accessible through the Federal Freedom of Information Act (FOIA) or a federally generated and enforceable disclosure instrument designed specifically for US-international adoptions. They should be collected and retained in the aforementioned recommended National Archives.

- Establish federal document collection, record keeping and retention, and statistical mechanisms on all US-born children adopted internationally including those adopted through stepparent and kinship placement, and the yearly publication of those statistics and related material be mandated by law.

- Establish standards for US-born internationally adopted persons, upon request, to access their adoption records held within the US, including all identity documents unredacted.

- Establish clear explanations and rules regarding how to access to records generated in receiving countries.

- Establish rules for US citizenship retention and dual citizenship.

- Establish citizenship rights guidelines and provisions for US born-adoptees whose citizenship was changed as minors, without their permission.

CONCLUSION

Adoption is not a one-time event, but a lifetime process that effects those most intimately involved--adopted persons, biological parents and adoptive parents--throughout their lives. Their interests, especially those of adopted persons, should hold precedence over the pecuniary and political interests of accreditors, adoption providers and contractors. Moreover, the process by which adoption is achieved should be ethical, transparent and open, devoid of attempts to cover-up spurious adoption practices and outmoded social ideology that denies adopted persons their identity and history. Bastard Nation is concerned that the draft IAA, with its emphasis on industry self-regulation, does little to guarantee best practice standards regarding accreditation procedures, identity and records rights, and the civil rights of adoptees in international adoption.

International adoption is by definition a federal procedure engaging a plethora of federal agencies and regulations in its process. We are deeply troubled that the State Department has apparently washed its hands of any meaningful control of US-based international adoption, seeking instead to privatize and de-centralize the entire process from accreditation to records access that gives private entities and individual states authority over much of the process and practice, rendering international adoption little more than an adjunct of private business and state child welfare policy.

As a model of consumer protection and industry responsibility, the draft IAA lacks both protection and responsibility. In the promotion of adoption industry "self-regulation" and states rights, we see little concern in the current proposal for industry transparency or the civil and human rights, and overall well-being of adopted persons and their biological and adoptive parents. By reducing the misnamed "adoption triad" to bit players who apparently should just be grateful to the stars for letting them walk on in the third act, the draft goes against the spirit of openness found in the Hague. The draft, instead, perpetuates the secret and shame-laden system still in force in the US today where in 46 states, the records and identities of adult adoptees are held hostage by a failed sealed records social experiment held in disrepute by much of the world.

The United States, as the leading receiving country should be in the forefront of sound international adoption practice, held to the highest standards, of accountability, transparency, and openness. Bastard Nation urges in the strongest terms that the draft IAA be revisited and re-written to reflect best practice standards--NOT the entrenched financial and political interests of the adoption industry.